

REMARKS

Claims 1-29 remain pending in this application. Claims 1-10, 14, and 15 were amended herein. Support for the amendments can be found at least at page 5, lines 23-24. Favorable reconsideration is respectfully requested in light of the amendments and remarks submitted herein.

Claims 1-10 and 14-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Miyano et al. JP10109906 or Bessette et al. WO 0118201. Applicant respectfully traverses this rejection.

Claims 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Miyano et al. JP10109906 alone or further in view of Bessette et al. WO 0118201. Applicant respectfully traverses this rejection.

Rejection under 35 U.S.C. § 102(b)

Claims 1-10 and 14-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Miyano et al. JP10109906 or Bessette et al. WO 0118201. Applicant has amended the independent claims 1 and 10 to recite that the composition contains both carvacrol and thymol. Applicant respectfully asserts that neither Miyano nor Bessette anticipates the amended claims.

Both Miyano and Bessette teach compositions that can contain a vast number of compounds, two of which include carvacrol and thymol. However, because Miyano and Bessette only teach a genus of compositions and do not identically disclose or describe, within the meaning of 35 U.S.C. § 102, the claimed species, they do not anticipate the pending claims. Furthermore, because the genus would include an untold number of species it does not disclose the claimed species. In determining whether a genus anticipates a species, a number of factors have to be considered, including the number of species disclosed, and whether or not there is any particular teaching about the particular components of the species that Applicant claims.

Miyano describes compositions that can include active principles and mildew proofing constituents. The active principles can be chosen from: paraoxybenzoic acids, dehydroacetic acid or its salts, sorbic acids or its salts, 2-(4-thiazolyl) benzimidazole, imazalil, orthophenyl phenol or its salts, diphenyl, glycerine fatty acid esters, polylysine, chitosan, Artemisia capillaris extract, Timor, and carvacrol. The mildew proofing constituents can be chosen from: metal hydroxides, organic acids such as benzoic acid, fumaric acid, itaconic acid, adipic acid,

propionic acid or salts thereof, zinc oxide, metaphoric acid, barium, zinc, and calcium. The number of possible combinations that could be created using these two lists is extremely large. Miyano offers no specific mention of thymol, carvacrol, or zinc, beyond their mention in the lists of possible components.

Therefore, because Miyano includes a very large number of species and does not offer any particular suggestion or indication about the particular species that Applicant is claiming, Applicant respectfully asserts that the genus disclosed in Miyano does not anticipate the particularly claimed species of Applicant's pending claims. Stated another way, Applicant respectfully asserts that one of ordinary skill in the art would not have been able to "at once envisage" the specific composition with the generic disclosure of the numerous compositions, and therefore the specific compositions claimed are not anticipated.

Similarly, Bessette also includes a number of species with no indication regarding the claimed species. Bessette discloses compositions that include naturally occurring plant substances. The naturally occurring plant substances exemplified in the disclosure of Bessette include phenethyl propionate, methyl salicylate, pulegone, carvacrol, thymol, thyme oil, citronellal, eugenol, α -terpineol, cinnamic alcohol, benzyl alcohol, phenethyl alcohol, t-anethole, d-limonene, eucalyptol, citronellal 80, thyme red, thyme white, vanillin, α -phellandrene, piperonyl alcohol, piperonyl acetate, piperonal, R-limonene, ethyl vanillin, p-cymene, iso-eugenol, guaiacol, and benzyl acetate.

The only combinations disclosed in Bessette are thymol, t-anethole, α -terpineol, eugenol, and citronella; eugenol, α -terpineol and cinnamic alcohol; benzyl alcohol, phenethyl propionate, phenethyl alcohol, and α -terpineol; pulegone, eugenol, and α -terpineol; α -terpineol and eugenol; α -terpineol and phenethyl alcohol; eugenol and phenethyl alcohol; benzyl alcohol, phenethyl alcohol, phenethyl propionate and α -terpineol; phenethyl alcohol, α -terpineol, and benzyl alcohol; phenethyl alcohol, α -terpineol, benzyl alcohol, and phenethyl propionate; phenethyl alcohol, α -terpineol, benzyl alcohol, phenethyl propionate, and eugenol; phenethyl alcohol, and pyrethrins; α -terpineol, and pyrethrins; benzyl alcohol and pyrethrins; phenethyl propionate and pyrethrins; eugenol and pyrethrins; thymol, t-anethole, α -terpineol, eugenol, citronella, and phenethyl propionate; thymol and phenethyl propionate; thymol, t-anethole, α -terpineol, eugenol, citronella, and benzyl alcohol; and thymol, t-anethole, α -terpineol, eugenol, citronella, and

eugenol. Applicant also notes that the 20 different compositions that are specifically disclosed in Bessette are a small fraction of those that are possible.

Neither the general disclosure nor the specific combinations disclosed in Bessette would immediately point one of skill in the art to the specific combination claimed by the Applicant. Although a number of the combinations disclosed include thymol, none of the combinations include carvacrol.

With respect to the recitation of "at least one salt comprising a transition metal", Applicant notes that the only mention of transition metals is at line 13, page 21 of the PCT publication of Bessette. This passage mentions that certain other compounds may be included, such as colorants and trace elements. Zinc is given as one of the seven exemplary trace elements that could be included. No indication is given for the reason for including the trace elements, and none of the examples includes any trace elements, let alone zinc. The addition of the various carriers, and additives discussed greatly expands the number of possibilities provided in Bessette.

Therefore, because Bessette includes a very large number of species and does not offer any particular suggestion or indication about the particular species that Applicant is claiming, Applicant respectfully asserts that the genus disclosed in Bessette does not anticipate the particularly claimed species of Applicant's pending claims. Stated another way, Applicant respectfully asserts that one of ordinary skill in the art would not have been able to "at once envisage" the specific composition with the generic disclosure of the numerous compositions, and therefore the specific compositions claimed are not anticipated.

Based on the amendments made to the claims, and the comments offered above, Applicant respectfully asserts that the currently pending claims are not anticipated by either Miyano or Bessette. Applicant therefore respectfully requests that this rejection be withdrawn.

Although not specifically raised by the Examiner, Applicant respectfully asserts that neither Miyano, Bessette, nor the combination thereof render the pending claims obvious. Applicant reiterates the comments offered above, and asserts that because of the large number of species within the genres of Miyano and Bessette, and the lack of teaching towards Applicant's combination, there would not have been any motivation to utilize the specific combination claimed by the Applicant.

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Rejection under 35 U.S.C. § 103(a)

Claims 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Miyano et al. JP10109906 alone or further in view of Bessette et al. WO 0118201. Although the rejection has not been raised with respect to the newly amended claims, it will be addressed to the extent that it may be relevant.

Applicant reiterates the comments offered above with respect to the vastness of the genus disclosed by both Miyano and Bessette, as well as the lack of disclosure indicating the particular combination.

Based on the amendments to the claims and the remarks offered above, Applicant respectfully requests that this rejection be withdrawn.

Conclusion

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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